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June 12, 1992

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**JUN 12 1992**

Ms. Donna R. Searcy  
Secretary  
Room 222  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

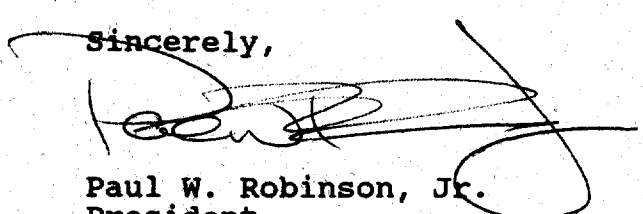
Dear Ms. Searcy;

BTMI respectfully requests that you accept the enclosed filing of Comments with regard to the proceeding involved in MM Docket No. 92-51. This firm is filing one original and ten (10) copies of our comments, in the hope that you will kindly provide each of the Commissioners with a personal copy.

The remaining copy should be used for receipt purposes. If you could arrange for the Receipt Copy to be returned to BTMI's offices either by mail, or by presenting it to BTMI's courier for return this afternoon, we would be greatly obliged.

Thanks you for your assistance in this matter.

Sincerely,



Paul W. Robinson, Jr.  
President

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 12 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Matter of )

Review of the Commission's )  
Regulations and Policies )  
Affecting Investment in the )  
Broadcast Industry )

MM Docket No. 92-51

To: The Commission

**COMMENTS OF BTMI, INC.**

BTMI, Inc., by its attorneys, hereby submits Comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry, FCC 92-96, released by the Commission in the above-captioned proceeding on April 1, 1992 (hereinafter "Notice").

**Introduction and Background**

This proceeding is the outgrowth of the Commission's continuing efforts to address the economic problems currently besetting the broadcasting industry. The Notice recognizes the significance of the broadcasting industry to the nation's economy and the need to reduce the regulatory burden on investing in broadcasting. Commissioner Duggan, in his separate statement accompanying the Notice, underscored the urgent need for the Commission to review its policies that affect the ability of broadcast companies to attract capital:

Access to capital is the single greatest barrier to entry in the broadcasting field today. Commercial markets for broadcast loans have virtually gone dry in the last 12 months, and I believe it is right for us to consider possible actions by the Commission to ease this credit crunch.

BTMI, Inc. ("BTMI") provides a perspective based on its experience as an asset management consulting firm. Since 1989, BTMI has offered lenders, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation consulting services concerning financial asset management, fair-market valuation, debt re-structuring, loan recovery, and asset marketing. The company has rendered services to senior lenders with respect to radio, television, and cable properties in major, medium, and small markets in loan transactions with a cumulative value in excess of \$1.8 billion. BTMI also serves its clients in the capacity of both court-appointed receiver and trustee in cases where no other option is available. In such situations, managing the sale of broadcast properties to satisfy the claims of secured and unsecured creditors has been the firm's primary responsibility.

BTMI is thus in a unique position to monitor the substantial changes that have occurred in the station trading market. As the Commission is aware, sale prices (and asset values) have been on a serious decline for at least the past two years. The declining economy and the softness in advertising revenues have combined to decrease the operating cash flow of virtually every broadcast station in the United States. As a result, banks, which made loans to broadcasters based on cash flow, have seen the value of their collateral fall. Federal regulations governing the reporting standards regarding highly leveraged transactions

(HLT's) brought more pressure to bear on both the banks and their borrowers.

The Comptroller of the Currency's elimination of the HLT designation and the Commission's recent liberalization of the radio ownership rules are two examples of regulatory relief that have the potential to improve the value of broadcast assets and to create a more positive environment in the trading market. However, a missing element in the economic recovery of the broadcasting industry is the availability of senior financing, the most cost-effective form of investment capital. Conflicting court decisions in several bankruptcy cases involving broadcasters have served to reinforce the perception in the banking community that a broadcast loan is a bad credit risk.

In BTMI's view, clarification and a slight modification of the Commission's policy toward the lender's secured position relative to the "property" rights associated with a broadcast license is very likely to spur banks to return to the broadcast lending business. However, absent some form of regulatory relief, it will be a long time, if ever, before this "very desirable" source of funding becomes available to the broadcast industry. Accordingly, for the reason set forth below, BTMI urges the FCC to rule that a third party lender may take a security interest in a broadcast license to the same extent that the Commission has permitted a security interest in the stock of a licensee, namely, subject to a requirement that the approval of the Commission be obtained prior to any assignment of license or

transfer of control. As we shall show, the provision of a limited security interest in a license will have no impact on the accountability of Commission licensees and will in no way diminish the Commission's authority.

### Discussion

The Commission has expressed concern with the independence of broadcast stations if security interests in licenses are permitted. The Notice invited comments on "the effect that holding a security or reversionary interest may have on the likelihood that creditors will attempt to exercise control or have substantial influence over a borrower station." Notice at ¶ 23. BTMI submits that the concerns expressed by the Commission with respect to granting lenders a security interest in a license are rooted in a misunderstanding of the concept of a "security interest."

As BTMI pointed out in its Comments filed in this proceeding on April 22, 1991, the grant of a security interest in a broadcast license would in no way undermine the FCC's policy, embodied in Section 310(d) of the Communications Act, in ruling on the qualifications of parties involved in assignments and transfers and in ensuring that licensees do not abdicate control. The creation of a security interest in a license would not diminish the responsibility of the licensee to operate the station in accordance with Commission policies and the terms of its license. By ruling that a licensee can give creditors a security interest in a broadcast license, the Commission will

empower licensees of stations with the ability to take advantage of more attractive financing arrangements.

The broadcasters and financial institutions which filed comments in support of the Petitions for Declaratory Ruling are not seeking an expansion of authority conferred upon the FCC in the Communications Act. Rather, they are seeking clarity. Broadcast licensees and lenders are being held hostage by legal ambiguity. Absent a ruling by the Commission as to whether a broadcast station is to be considered as a "whole" entity rather than the "sum of its parts," various federal bankruptcy courts as well as other courts of competent jurisdiction will continue to wrestle with the issue of whether a broadcast lender is a "secured" creditor with respect to the station as a "going concern" or is "secured" only as to certain assets (e.g., equipment) and "unsecured" as to other assets (e.g., the broadcast license itself). This issue is not an academic one to a financial institution which has lent capital to a debtor whose net assets may be insufficient to satisfy all creditors. Factored into this equation is the question of whether foreclosure by lenders on "secured assets," which effectively creates a "bare license," de facto renders the license unassignable and subject to revocation.

The FCC's primary concern with respect to security interests in broadcast licenses is the fear of undue influence being exerted upon a licensee by a broadcast lender, thus diminishing the licensee's discretion and ultimately resulting in a de facto

transfer of control. However, broadcast lenders have no more interest in being broadcast operators than they have an interest in being homeowners. It is BTMI's experience that creditors (or in this case, senior lenders) are reluctant to be involved in a business they know very little about: broadcasting. Generally, a lender will do everything in its power to work with a broadcast borrower who is in default in an effort to recover as high a percentage of its initial investment as possible. Experienced broadcast lenders recognize that "pulling the trigger" on a financially troubled customer is not the most cost-effective way of implementing a successful exit strategy.

The concept of asset value comes into play first and foremost in dealing with a problem broadcast credit. Lenders are committed to preserving asset value to the fullest extent possible. By seizing control, a lender jeopardizes the asset value of the station (and therefore, the value of the collateral held). Concerns with "lender liability" laws have also contributed to the lending community's self-imposed caution when considering the option of "seizing" control of a defaulting borrower's broadcast operation. The inherent risks (and the potential costs) in pursuing such a strategy are simply too great to be justified by a prudent lender.

Lenders have a vested interest in keeping broadcast facilities as going concerns. State and Federal court filings to seek the involuntary assignment of a broadcast license to a receiver or trustee are not only fraught with uncertainty but are

also often imprudent from a practical standpoint. Once it becomes public knowledge that a broadcast facility is in financial trouble, advertising revenues decrease significantly and the value of the station plummets. To avoid situations where the ability of a station to serve the public is in jeopardy, BTMI recommends that the Commission create a mechanism which would allow lenders, upon default by a licensee, to seek FCC approval for involuntary assignment of the broadcast license to a third party trustee or holding company (who would then be able to sell the station for the benefit of the "secured party," i.e., the lender, and other secured and unsecured creditors, without the necessity of lengthy state or federal litigation and the problems associated with a station that is no longer financially viable). If such an approach were adopted, the Commission would continue to maintain its policies governing licensee control and accountability. The FCC would be abdicating none of its power -- indeed, the Commission would be in a much better position to control the orderly disposition of broadcast stations by being involved at the early stages as opposed to waiting until a State or Federal court has ordered the assignment of the station's license (subject only to FCC approval). The Commission would still retain the option of denying an application on FCC Form 316 and ordering the parties to resolve the matter in a court of competent jurisdiction.

As noted earlier, lenders are not broadcasters. Their sole interest is ensuring that when they lend money to a broadcaster




to operate a broadcast station, they are a secured party as to the whole amount of the loan. As long as any ambiguity exists as to whether a bank is (a) a "secured creditor" as to the station as a "going concern" or (b) a "secured creditor" only as to the "hard assets" and an "unsecured" creditor as to a "bare license," the availability of broadcast capital to new entrants to broadcasting and existing broadcasters under financial duress will be virtually nonexistent. As Commissioner Duggan observed, the time is right for the Commission to ease "this credit crunch."


Respectfully submitted,

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Dated: June 12, 1992